

## HOUSE BILL NO. 739

INTRODUCED BY A. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PUBLIC SERVICE COMMISSION AUTHORITY AND ENERGY SUPPLY, TRANSMISSION, AND DISTRIBUTION; ~~AUTHORIZING THE PUBLIC SERVICE COMMISSION TO REGULATE RATES IMPOSED BY A LOCAL GOVERNMENTAL ENTITY THAT ACQUIRES ENERGY TRANSMISSION OR DISTRIBUTION FACILITIES; AMENDING SECTIONS 69-7-101 AND 69-7-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE~~ DEFINING TERMS; PROHIBITING CERTAIN ACTIONS OF A MUNICIPAL ELECTRIC UTILITY; ESTABLISHING APPLICATION FILING REQUIREMENTS; REQUIRING THE PUBLIC SERVICE COMMISSION TO REVIEW MUNICIPAL ELECTRIC UTILITY APPLICATIONS AND ISSUE ORDERS; REQUIRING A PUBLIC VOTE; ALLOWING THE COMMISSION TO HIRE INDEPENDENT CONSULTANTS TO ASSIST IN APPLICATION REVIEWS; AUTHORIZING THE COMMISSION TO ADOPT RULES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**NEW SECTION. Section 1. Definitions.** Unless the context requires otherwise, as used in [sections 1 through 6], the following definitions apply:

(1) "Jurisdiction" means the physical boundaries of a local government entity forming the municipal electric utility or the service territory of a municipal electric utility, whichever is larger.

(2) "Local government entity" has the meaning provided for in 2-7-501(7)(a).

(3) "Municipal electric utility" means any local government entity or an entity created by a local government for the purpose of generating, transmitting, or distributing electricity to retail customers.

**NEW SECTION. Section 2. Prohibition.** Except as provided in [sections 1 through 6], a municipal electric utility may not:

(1) acquire facilities that generate, transmit, or distribute electricity to customers; or

(2) expand the municipal electric utility's jurisdiction.

**NEW SECTION. Section 3. Filing requirements.** (1) Prior to a municipal electric utility issuing more than \$5 million of general obligation or revenue bonds or spending more than a total of \$5 million of public funds for the initial acquisition of electric generation, transmission, or distribution facilities or for the expansion of its jurisdiction, the municipal electric utility shall file an application with the commission.

(2) The application must include the following information:

(a) the municipal electric utility possesses the legal authority necessary to provide electricity to the customers located within its jurisdiction;

(b) the municipal electric utility is governed by an elected governing body;

(c) the municipal electric utility is subject to rate and service conditions by the governing body;

(d) the municipal electric utility has made provisions for an adequate and reliable supply of electricity for customers within its jurisdiction at prices and on terms and conditions that are more favorable than those provided by the existing public utility for that service;

(e) the municipal electric utility will assume a proportionate share of all potential costs being incurred by the existing public utility that serves the proposed jurisdiction of the municipal electric utility, including but not limited to the costs for:

(i) the acquisition of electricity from qualifying facilities as identified in Title 69, chapter 3, part 6; and

(ii) compliance with the renewable resource standards contained in Title 69, chapter 8, part 10; and

(f) any other information that is requested by the commission by rule.

**NEW SECTION. Section 4. Commission review.** (1) The commission shall review the application submitted pursuant to [section 3] for completeness within 45 days and notify the applicant of any deficiencies.

(2) (a) Except as provided in subsection (2)(b), the commission shall issue an order within 270 days of receiving a complete application.

(b) The commission may extend the time period in subsection (2)(a) for an additional 90 days if it determines that extraordinary circumstances necessitate the extension.

(3) The application must be reviewed pursuant to the contested case provisions of the Montana Administrative Procedure Act.

(4) The commission order must include the following findings:

(a) the proposed action by the municipal electric utility to initiate the acquisition of electric generation, transmission, or distribution facilities or to expand its jurisdiction will provide customers with safe and reliable service at just and reasonable rates;

(b) the proposed rates of the municipal electric utility will be less than rates of the existing public utility providing service to the municipal electric utility's proposed service jurisdiction;

(c) the proposed action of the municipal electric utility will have no adverse effect on the existing public utility or its customers; and

(d) the proposed action by the municipal electric utility is in the public interest.

(5) If the commission finds that the application of a municipal electric utility to initiate the acquisition of electric generation, transmission, or distribution facilities or to expand its jurisdiction will have adverse effects upon the existing public utility or the public utility's customers or that the application or expansion of the municipal electric utility's jurisdiction is not in the public interest, the municipal electric utility may not proceed with acquisition of electric generation, transmission, or distribution facilities or the expansion of its jurisdiction.

**NEW SECTION. Section 5. Public vote.** (1) ~~Within 120~~ NO SOONER THAN 60 days after the commission has issued an order approving the municipal electric utility's application as provided in [section 4], the municipal electric utility shall submit its proposal for the acquisition of electric generation, transmission, or distribution facilities or to expand its jurisdiction for approval by a majority of ~~the voters~~ AT LEAST 40% OF THE QUALIFIED ELECTORS in all areas where the municipal electric utility serves customers or proposes to serve customers.

(2) If, pursuant to subsection (1), ~~the voters~~ A MAJORITY OF AT LEAST 40% OF THE QUALIFIED ELECTORS do not approve the municipal electric utility's proposal, the municipal electric utility may not proceed with acquisition of electric generation, transmission, or distribution facilities or the expansion of its jurisdiction.

**NEW SECTION. Section 6. Commission application review fees -- rulemaking.** (1) The commission may engage independent consultants or advisory services to evaluate a municipal electric utility's application. The commission shall charge a fee to the municipal electric utility to pay for the costs of the consultants or advisory services.

(2) The commission may adopt rules to implement the provisions of [sections 1 through 6].

**NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified

as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1 through 6].

**NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

**NEW SECTION. Section 9. Retroactive applicability.** [Section 3(1)] applies retroactively, within the meaning of 1-2-109, to January 1, 2004, for the purposes of calculating the expenditure of public funds for the municipal electric utility's acquisition of electric generation, transmission, or distribution facilities or for the expansion of its jurisdiction.

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